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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 DIEGO PADILLA,

11 Petitioner,

12 vs.

13 STATE OF NEVADA, *et al.*,

14 Respondents.  
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Case No. 2:16-cv-00839-JCM-NJK

**ORDER**

17 This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254  
18 by a Nevada state prisoner. Neither a filing fee nor an application to proceed *in forma pauperis* was  
19 submitted with the petition. When filing a habeas action, petitioner must either submit the \$5.00  
20 filing fee for habeas petitions or an application to proceed *in forma pauperis*. Due to the lack of an  
21 *in forma pauperis* application or filing fee, the present action will be dismissed without prejudice to  
22 the filing of a new petition in a new action with an *in forma pauperis* application with all required  
23 attachments. It does not appear from the papers presented that a dismissal without prejudice would  
24 result in a promptly-filed new petition being untimely. In this regard, petitioner at all times remains  
25 responsible for calculating the running of the limitations period as applied to his case and properly  
26 commencing a timely-filed habeas corpus action.

27 **IT THEREFORE IS ORDERED** that this action is **DISMISSED** without prejudice to the  
28 filing of a **new petition in a new action**.

James C. Mahan  
UNITED STATES DISTRICT JUDGE